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NOTE ON INTERNATIONAL PROTECTION[1] *

I. INTRODUCTION

1. For several years, the characteristics of refugee flows worldwide have been changing. Contemporary refugee flows are characterized by flight from war and human rights abuses, that often amount to persecution; the very objective of some civil conflicts is the forcible expulsion of targeted populations. This type of violence, which has beset several regions in the 1990s, has caused particular dilemmas for refugee protection. The traditional role of the nation-state in war, as in persecution, is increasingly shared with armed factions, criminal gangs, and even private forces. The resulting mass displacements have included civilians, fighters and persons active or complicit in genocide. Separating out those who have no claim to international protection, and whose presence and actions may incite fresh violence has proven beyond the capacity of the international community, even over time. These are among the complex circumstances which have contributed to placing asylum, and international law, under severe pressure.

2. Often, persons fearing for their lives or liberty flee alongside those leaving poverty and grinding hardship. Composite flows, while neither a new phenomenon nor restricted to situations of war and civil strife, complicate the task of ensuring international protection, particularly when the flows are massive. Even in the case of small-scale population flows, the failure to differentiate between persons in need of protection and others, including criminals evading justice, can create a harsh and unreceptive climate for

[1] Drawing on significant developments in 1996 in the field of international protection of refugees, this Note reviews the institution of asylum, in particular, the grant of asylum as a peaceful act, admission and *non-refoulement*, the civilian character of refugee camps, and the physical safety of asylum-seekers, refugees, returnees and others of concern. Reviewing asylum as a network of rights and duties, the Note considers how it responds to contemporary protection needs, and how it can be strengthened.

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protection. UNHCR's efforts are directed towards strengthening international commitments to receive refugees and to bring about solutions, and, as part of these efforts, to secure proper application of the exclusion and cessation clauses of the international refugee instruments. There is also an increased interest in resettlement as an essential instrument of protection and as a durable solution.

3. 1997 marks thirty years since the 1967 Protocol made the refugee protection regime universal by removing geographic and temporal restrictions, and since the Declaration on Territorial Asylum sought to give greater content to the individual right to seek and to enjoy in other countries asylum from persecution. During this period, international instruments and state practice have affirmed that a broad range of persons is entitled to international protection, on grounds which frequently overlap, including conflict, events seriously disturbing public order and serious human rights abuses. Notwithstanding a number of positive developments, however, the possibilities for obtaining international protection continue to be diminished as refugees and asylum-seekers face border closures, armed violence, interdiction at sea, expulsions, and legal restrictions as well as premature return to an insecure environment.

4. As in previous years, refugees and asylum-seekers have continued to find refuge in many parts of the world. Most States parties to the international refugee protection instruments have complied with the spirit and letter of those treaties in extending international protection to persons unable or unwilling to return home due to fear for their lives or liberty. A number of States also responded to the protection needs of individual refugees by providing generous resettlement opportunities. The general observance by States - whether parties to international instruments or not - of core protection principles, and the good working relationship UNHCR has continued to enjoy with most States over the past year, underscored the soundness of the international refugee protection regime. During the past year, three States also acceded to the 1951 Convention or 1967 Protocol, bringing to 134 the number of States parties to one or both of these instruments. A further three acceded to the international instruments for the prevention and reduction of statelessness. Where breaches of these instruments occurred, however, they often created severe protection problems for refugee or asylum-seeking individuals, as well as undermining the international protection framework, which is sustained through the demonstrated adherence of States.

5. Developments in the past year have illustrated yet again that the grant of asylum may place unduly heavy burdens on certain countries, as foreseen by the Preamble to the 1951 Convention. A number of current refugee situations illustrate both this burden and the absence of any satisfactory alternatives to asylum. These situations demonstrate acutely the need for sustained international commitment and support to refugee-hosting States.

6. This commitment must also be linked to increased international support for the institution of asylum, and for identifying solutions, if the High Commissioner is to exercise her mandated protection functions of securing the fundamental rights of refugees, asylum-seekers and others in need of international protection; playing a supervisory and standard-setting role in developing international refugee law; and identifying and helping to implement fair and sustainable solutions. As far as host States are concerned, the Executive Committee of the High Commissioner's Programme has frequently expressed concern over the impact of large refugee populations on countries of asylum, in particular developing countries with limited resources, and has encouraged other

States to make refugee and returnee needs a component of their multilateral and bilateral development programmes. Insufficient attention to the economic, social and environmental implications of hosting large numbers of refugees undoubtedly plays a significant role in weakening the willingness of States to continue to extend asylum in a generous manner.

7. The past year has seen numerous incidents of *refoulement*, and serious abuses of refugee rights. Refugees and asylum-seekers have been expelled, in some cases even after their acceptance for resettlement in third countries; rejected at borders; interdicted on the high seas and otherwise involuntarily returned, whether through armed force or pursuant to bilateral agreements between States. As a result, refugees and asylum-seekers have been exposed to grave, and in some cases life-threatening, danger. Men, women and children trying to flee their country, or return to it, have been killed outright, kidnapped, or subjected to sexual violence. Asylum-seekers and refugees, crossing borders sown with anti-personnel mines, embarking on treacherous journeys by sea, encountering banditry, or finding themselves caught up in a burgeoning war, also face heightened threats to their physical security. In recent months, refugee camps and settlements have been subject to forced relocation, as have returnees and internally displaced persons; major human rights violations have occurred in the course of these forced relocations and camps and settlements have been razed in organized attacks. In some cases, refugees have been denied basic food and medical care. Women continue to face particular dangers, and abuses of the rights of children through military attack or recruitment, even within refugee camps, has not been eliminated.

8. In the Great Lakes region of Central Africa in particular, asylum-seekers, refugees, returnees, stateless persons, internally displaced and vulnerable populations have all suffered acute and shocking failures of protection, often on a massive scale. Continued denial of access, the absence of necessary cooperation by local authorities and limited political support meant that refugees' health and safety were seriously jeopardized, and also that those in need of protection were not identified and separated from others. In the former Yugoslavia, the intimidation of returnees, volatile discord over land and property ownership or occupation, nationality disputes and summary returns may threaten fragile social and political stability.

9. Despite these acute operational difficulties, a number of positive developments in the international legal framework should be noted. At the national, regional and international levels, judicial human rights bodies continued to develop the legal framework of refugee protection, further defining the scope of obligations towards asylum-seekers and adding content to the rule of *non-refoulement*, also in respect of persons facing a substantial risk of torture. National and international courts gave increased recognition to the particular forms of persecution faced by women, notably rape, sexual violence, and other inhuman or degrading treatment.

10. In some countries, however, legislative developments and court decisions produced a tightening of asylum regulations and a narrowing of the refugee definition. Some authorities moved to restrict the refugee definition in respect of persecution at the hands of non-State agents, gender-related claims, and by overly broad interpretation of the exclusion clauses. Through such measures, refugee protection, and even access to procedures for refugee status determination, was denied to a larger number of persons in need of international protection, thus widening the gap between UNHCR's statutory obligations and the

necessary cooperation of States. Material support to some asylum-seekers was removed, and mandatory detention of asylum applicants broadened, exacerbating the hardships faced by those seeking asylum. The widespread and often prolonged detention of asylum-seekers and of stateless persons continued to be a particularly serious concern for UNHCR. Immediate return procedures were introduced for persons determined, through a highly expedited mechanism, as not falling within the refugee definition. In some countries, administrative procedures for the processing of asylum claims no longer carry adequate legal safeguards of due process; and the expansion of visa regimes, carrier sanctions, and inspections at airports abroad has closed even the possibility of entry to a number of persons who may be in need of international protection.

11. Efforts to curb illegal migration frequently include measures which do not provide adequate exemption for those seeking asylum. While many of these actions are undoubtedly directed at perceived abusers of the system, their impact is often indiscriminate. The consequence of these actions is, as a practical matter, that refugees and asylum-seekers are denied rights and protection which they should enjoy and, as a legal and institutional matter, that the real effect of the refugee protection framework is diminished.

II. ASYLUM, ADMISSION AND *NON-REFOULEMENT*

12. For many millions of people, asylum is a necessary implication of the exercise of their basic rights. Article 14 of the Universal Declaration of Human Rights recognizes that everyone has a right to seek and to enjoy in other countries asylum from persecution. The very concept of asylum has changed and developed over time; and variations exist between its scope in international standards and in some national legislation. It is used, broadly, to describe the protection provided by a State, on its territory and in the exercise of its sovereignty, to persons in need of international protection, and includes admission to safety. While it is the prerogative of the State to grant asylum to a particular individual, asylum-seekers are, at a minimum, entitled to receive temporary refuge or have their claim determined as a first step towards giving content to the right to seek and enjoy asylum in another country. For refugees, admission and asylum are preconditions to their fundamental rights and freedoms, which have been denied and transgressed elsewhere.

13. Where asylum enables the refugee to become part of a new community through local integration or resettlement, it is itself a durable solution; extended for a temporary period, it encompasses admission to safety and non-return to danger, respect for human rights, and the identification of a durable solution. Intrinsic to asylum is the prohibition, in international conventions and customary international law, of the return of a refugee to situations endangering life or freedom. As the Executive Committee has underlined, action whereby a refugee is obliged to return or is sent to a country where he or she has reason to fear persecution constitutes a grave violation of this non-derogable principle.

14. The High Commissioner's mandate includes responsibility for promoting the admission of refugees to the territories of States; and UNHCR is concerned that admission, as a key step in according initial protection, has been denied to refugees and asylum-seekers, particularly through border closures, rejection at the frontier, interdiction, and the use of non-rebuttable "safe third country"

procedures.[2] Preventing asylum-seekers from finding safety, or from obtaining access to procedures, negates their fundamental rights, and may amount to *refoulement* in breach of international law. Various Executive Committee conclusions call upon States to take a positive attitude to admission and to asylum (called, in this context, first asylum, temporary asylum or temporary refuge). The Executive Committee has, for example, recognized that the safety and physical integrity of refugees depend on respect for the basic protection principles and has urged States to continue to admit and receive refugees, pending identification of their status and of an appropriate solution to their plight; to grant at least temporary refuge to asylum-seekers in cases of large-scale influx, without discrimination; not to reject asylum-seekers at the frontier, and to observe the legal principle of *non-refoulement* in all situations of large-scale influx. Where measures aimed at discouraging abusive use of asylum procedures exist, the Executive Committee has emphasized that these must not have a detrimental effect on fundamental protection principles, including the institution of asylum.

15. On a regional level, States have also accepted the need for a liberal approach to admission for asylum purposes. The 1969 Organization of African States (OAU) Convention requires Member States to "use their best endeavours...to receive refugees" and to secure their settlement. This Convention, as well as the 1966 AALCC Bangkok Principles, disallows rejection at the frontier (as does the 1984 Cartagena Declaration). Both provide for temporary residence or provisional asylum respectively where longer-term asylum cannot be granted.

16. The principle of burden-sharing is highly relevant in this context, and the Executive Committee has called on States to take measures to ensure that the burden of the first asylum countries is equitably shared. Material and other support for the most affected countries is needed, as is the commitment to keeping borders open to asylum-seekers and respect for the principle of *non-refoulement*. The Executive Committee has also urged Governments to respond actively to the resettlement needs of refugees in this spirit. Measures which limit the availability of asylum in any country or group of countries inevitably shift the burden to other States, placing a more onerous obligation on them. Earlier discussions in this forum on comprehensive approaches and on international solidarity have reflected the complicating and even destructive effect of unilateral restrictive measures in respect of refugee protection. In recognition of this, the need for a general strengthening of international law and practice with regard to asylum, admission and *non-refoulement* needs to be recognized as an element of international burden-sharing.

17. It is essential that persons in need of international protection be admitted and identified; such persons must also be protected against *refoulement*, including to any place where they face a substantial risk of torture. Many States have successfully implemented comparatively rapid procedures at points of entry which ensure a fair and competent assessment of the need for international protection, and UNHCR encourages States to ensure the rights of the individual through proper legal safeguards, in developing such procedures. UNHCR draws particularly serious breaches to the attention of the international community,

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[2] UNHCR considers that the conclusion of formal agreements among States can enhance the international protection of refugees by leading to the orderly handling of asylum applications and ensuring some form of responsibility-sharing mechanisms. Such agreements must ensure, however, that one of the State parties will give due consideration to the asylum application within its own procedures.

underlining that in some circumstances, failures to protect the rights of refugees, asylum-seekers and stateless persons can give rise to issues of international peace and security. All possibilities for a further strengthening of the dialogue between UNHCR and States on means to strengthen basic protection principles need to be pursued.

III. REFUGEE SECURITY AND THE CIVILIAN CHARACTER OF REFUGEE CAMPS

18. Human rights law obliges States to ensure the physical safety of all persons within their jurisdiction; and all refugees, regardless of where they find themselves, are entitled to respect for security of person. As has long been recognized, refugee protection is seriously challenged in situations where the peaceful nature of asylum is not respected, whether through armed attacks on refugee camps and settlements or their militarization. While neither the 1951 Convention nor UNHCR's mandate specifically provide that refugees must not be engaged in armed activities, this was understood as an essential starting point of the non-political and humanitarian nature of the High Commissioner's work. Subsequently, it was made more explicit through the OAU Convention, as well as through various Executive Committee conclusions and resolutions of the General Assembly.

19. Exploitation of refugee situations by elements seeking to use asylum countries as bases for political and military activities is not new. In the 1970s and 1980s, some groups of exiles in the Horn of Africa, Southern Africa, South and South-East Asia, and Central America were militarily active against their countries of origin, in most cases with the support of other interested States. Such support may help explain the lack of consistent international condemnation of this phenomenon. The pattern has been echoed in the 1990s in the Great Lakes region of central Africa, where military training and support took place amidst international efforts on behalf of vulnerable civilian populations. The urgent needs of the preponderantly civilian populations and the clandestine nature of the militarization ensured that humanitarian activities continued, with no States assuming responsibilities for disarming armed elements or excluding and separating those suspected of genocide. Contrary to agreed international standards, and exacerbating the situation still further, camps were situated adjacent to sensitive borders. Failure to implement international standards in respect of the civilian nature of camps and protected populations undoubtedly contributed to the perception of refugee influxes as a threat to national and regional stability, and significantly undermined efforts to promote solutions. In terms of international law and of UNHCR's activities, the situation of militarized camps calls for a specific set of responses.[3]

20. The Executive Committee has in the past reflected at length on the sensitive issue of militarization of refugee camps and settlements. Its seminal

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[3] The situation of militarized camps is not identical to situations in which refugee populations are politicized to varying degrees, or where traditional community structures lead to the exercise of tight control over the group. These raise issues beyond the scope of this Note pertaining to the extent and nature of permissible political activity among refugees, and the complex issue of decision-making within varied social structures. The issue of voluntariness in the context of collective decision-making or decision-making by traditional leaders is discussed in UNHCR's handbook *Voluntary Repatriation: International Protection* (1996), p.41 et seq.

Conclusion No.48 on Military or Armed Attacks on Refugee Camps or Settlements affirmed that refugee camps and settlements have an exclusively civilian and humanitarian character, and that the grant of asylum or refuge is a peaceful and humanitarian act, not to be regarded as unfriendly by another State. The Executive Committee formulated key directives for enhancing the protection of refugee camps and settlements, notably that States of refuge, assisted by all other States, should do all within their capacity to ensure that the civilian and humanitarian character of such camps and settlements be maintained. Relevant organs of the United Nations were also urged to cooperate in promoting conditions which ensured the security of refugees in camps and settlements, including, wherever possible, the location of such camps and settlements at a reasonable distance from the frontier of the country of origin. The Executive Committee condemned all acts which posed a threat to the personal security of refugees and asylum-seekers, and also those which might endanger the safety and stability of States.

21. Regional developments in international law underscore the obligations of States in this regard. The Preamble to the OAU Convention recognized that refugee problems were a source of friction among many Member States, and distinguished the nature of exile for the refugee who "seeks a peaceful and normal life" and the person who flees "for the sole purpose of fomenting subversion from outside."[4] Under this Convention, States undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU. In Latin America, the Contadora Act on Peace and Co-operation of 1983 included a commitment by States to institute appropriate measures in the receiving countries to prevent the participation of refugees in activities directed against the country of origin, while at all times respecting the human rights of the refugees.

22. These positive obligations complement the requirement that all parties, including the refugees themselves, abstain from any activity likely to detract from the exclusively civilian and humanitarian character of camps and settlements. The Executive Committee has encouraged States to intensify their efforts to protect the rights of refugees, and to prevent them from becoming the object of armed attack. Departures from these basic tenets clearly undermine the very nature of the peaceful grant of asylum, rendering it not an act of international solidarity but a potential threat to the country of origin, to the country of refuge and to refugees themselves. Similarly, UNHCR's own work shall, according to its Statute, be humanitarian and social and of an entirely non-political character. The cooperation of both State and non-State actors is indispensable to securing this.

23. UNHCR's profound concern in respect of this issue is not limited to its implications for refugee safety or for the maintenance of international law. Militarized populations in exile, particularly on a large scale, can carry

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[4] This and similar provisions have been a consistent feature of international refugee law. The Treaty on International Penal Law of 1889 notes that "Political refugees shall be afforded an inviolable asylum; but it is the duty of the nation of refuge to prevent asylees of this kind from committing within its territory any acts which may endanger the public peace of the nation against which the offence was committed." Thirty years before the OAU Convention, the Montevideo Treaty on Political Asylum and Refuge (1939) had stated that refugees "shall not be permitted to commit acts which disturb the public tranquillity."

domestic conflicts across borders, sustaining and exacerbating those conflicts, as well as igniting fresh violence in other States. Such flashpoints can rapidly become unmanageable if the international community remains passive even when the ground rules of asylum are ignored.

24. It is clear that the international community can be more active in taking measures to secure the safety of refugees and asylum-seekers. The most basic step lies in locating refugee camps away from sensitive border areas. Vigorous international action is also needed to prevent attacks on refugee camps or settlements. Greater resolve is necessary to ensure accountability through international criminal jurisdiction for serious crimes, such as the killing of unarmed civilians. In camp settings, the implementation of existing international standards to safeguard basic rights often remains theoretical, particularly in respect of women and children. The Convention on the Rights of the Child, which covers all children within the State's jurisdiction and has been signed by 190 States, has implications for protection and assistance to refugee children. It urgently requires more effective implementation.

25. To avoid undermining the institution of asylum, States must make stronger efforts to secure and to maintain a clear distinction in respect of exiles engaged in armed activities, and others, in supporting refugee assistance programmes. Necessary international monitoring and verification can, under many circumstances, be carried out by aid workers as part of their routine presence. The disarmament of armed elements and the separation of a military cadre from the population at large will normally require professional military or security expertise, if indeed the two categories of population are distinguishable, and if such an operation can be accomplished at all. UNHCR's involvement in even partially militarized camps risks jeopardizing the non-political character of the organization and the humanitarian rationale for its role. In the event that the civilian nature of a camp cannot be verified, and military elements remain, UNHCR may well be required to review its involvement, on the basis that international protection cannot be extended under such circumstances.

IV. UNHCR ACCESS TO PERSONS IN NEED OF PROTECTION

26. A key element of the institution of asylum is UNHCR's unimpeded, rapid and secure access to persons of concern, whether during flight, asylum, repatriation, internal displacement or other situations of vulnerability. Denial of such access jeopardizes the protection of refugees,[5] who themselves have a right of access to UNHCR. International protection, particularly in the context of asylum, requires monitoring of the safety of refugees and asylum-seekers, and respect for their right to contact UNHCR. Assistance and relief activities also require such access to assess humanitarian needs and to ensure the proper use of resources, consistent with protection requirements, notably in respect of women and children. The Executive Committee has called on States to provide prompt and

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[5] The 1993 General Conclusion on International Protection, (71 XLIV). (Document references cited in footnotes 5 and 6 are drawn from the Division of International Protection's compilation: *Conclusions on the International Protection of Refugees adopted by the Executive Committe of the UNHCR Programme)*.

unhindered access by UNHCR and other appropriate organizations to refugees and asylum-seekers, in numerous contexts, ranging from procedures for the determination of refugee status to ensuring the civilian nature of refugee camps and settlements.[6]

27. In recent instances, such as those in Eastern Zaire, UNHCR has been denied access to refugees, and has been refused permission to provide them with essential food and other assistance, to supervise their well-being, or to evacuate those in need. While access has frequently been impeded in the past, current international presence and monitoring arrangements, particularly in countries of origin and on the edges of ongoing conflicts, are extremely fragile, both for lack of cooperation by the authorities as well as for security reasons. In addition to falling victim to general anarchy, criminality, and landmines, all of which threaten the local population in equal measure, increased operationality by humanitarian agencies in conflict situations has raised new levels of security concerns.

28. The killing of humanitarian workers in Bosnia and Herzegovina, Burundi, Chechnya (Russian Federation) and Rwanda has underlined the extent to which humanitarian organizations operating in lawless environments are at risk from a variety of State and non-State actors. These tragic events have impeded efforts to provide protection and relief, and undermined the promotion of solutions, for which monitoring is frequently essential. It is no longer sufficient for international access to be unimpeded; a positive obligation to guarantee unhindered and safe access is also required. The Executive Committee may wish to assert this obligation, as well as to support its implementation wherever obstacles exist.

29. While much has been done to improve the security and safety of field staff at the practical level by agencies themselves, the applicable international law remains weak. The United Nations Convention on the Safety and Security of United Nations and Associated Personnel is not yet in force nor does it adequately extend coverage to humanitarian personnel. Increased efforts are needed in order to secure for UNHCR and other concerned organizations security guarantees and corresponding practical measures, as well as to establish concomitant treaty obligations. In this context, the inclusion by the International Law Commission of crimes against United Nations and associated personnel in the draft Code of Crimes against the Peace and Security of Mankind is a positive development.

V. COMPLIANCE WITH NATIONAL LAWS

30. The United Nations Declaration on Territorial Asylum provides that States granting asylum shall not permit persons who have received asylum to engage in

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[6] UNHCR shall be given prompt and unhindered access to asylum applicants, refugees and returnees (22 III, 33 (h), 72(b), 73 (b)9iii), 77(q), 79(p), and shall be allowed to supervise the well-being of persons entering reception centres, camps or other refugee settlements (22 III, 48 (4)(d). UNHCR may monitor the personal security of refugees and asylum-seekers and take appropriate action to prevent or redress violations thereof (72 e). Asylum applicants and refugees, including those being detained, shall be entitled to contact UNHCR and should be duly informed thereof (8(e)(iv), 22 III, 44(g). Governments are to ensure safe and timely humanitarian access to persons in need of protection and assistance, including the internally displaced and victims of armed conflict, as well as refugees within their territories (75 i).

activities contrary to the purposes and principles of the United Nations. It illustrates the fact that asylum comprises rights and duties on the part of both States and individuals, creating a framework under which individuals find safety and undue friction between States is avoided. As part of this framework, the 1951 Convention recognizes that refugees are to respect national laws, and UNHCR shares the preoccupation of Governments over the consequences of refugees failing to do so.

31. Serious problems can result where refugees and asylum-seekers breach national laws or fail to respect national security concerns. Local security may be undermined, together with receptiveness to asylum-seekers in general. These consequences may, in turn, endanger the grant of asylum. In acknowledgement of this, the 1951 Convention and other international refugee instruments provide several courses of action where the crimes are of a particularly serious nature, threaten national security, or endanger the community of the country of refuge. None of the refugee instruments provide protection, immunity or any exoneration to refugees for illegal acts.

32. The framing of the Refugee Convention indicates that refugees are to be brought to justice in the normal way, with full respect for their rights, including the right of *non-refoulement*.[7] The exclusion clauses are neither an intended nor an appropriate response to transgressions of host country laws, as these relate to crimes of considerable international gravity, including war crimes and crimes against humanity, as well as non-political crimes of a serious nature committed prior to entry. The obligation to enforce national laws, and to ensure that asylum-seekers and refugees do not engage in activities contrary to the purposes and principles of the United Nations, lies with the host State, which should ensure that refugees within its territory conform with its laws and with international obligations. Observance of these principles, through the application of the relevant international instruments and their effective enforcement at the national level, also helps to secure acceptance of, and to safeguard, the institution of asylum. In some instances, the obligations of refugees may be inadequately understood by the national authorities or by refugees themselves, and the capacity to enforce national law may also be lacking.

33. The OAU Convention provides that a member State may appeal to another to "lighten the burden", where the State finds difficulty, for whatever reason, in continuing to grant asylum to refugees. The 1951 Convention also foresees that refugees expelled from one country for reasons of national security and public order should be given the facilities to seek legal admission into another country.

34. UNHCR fully supports the right of States in this area, and continues to work closely with them in this regard; at the same time, it is essential that

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[7] The provisions of Article 32 indicate that the expulsion of a refugee may be contemplated only on grounds of national security and public order, and only in pursuance of a decision reached in accordance with due process of law. Article 33(2) of the Convention provides that the benefit of the obligation of *non-refoulement* may not be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

these rights and obligations not be misused to justify arbitrary expulsions of refugees or unnecessary restrictions on them.

VI. CONCLUSION

35. Changes in the international environment have generated a searching review of possibilities for the protection of populations threatened or displaced by conflict, human rights abuses and persecution, and of ways in which security might be provided where refugees return to unstable conditions. It has always been acknowledged that the success of such strategies is contingent upon sufficient political will by the States directly concerned to address factors at the origin of these displacements. As refugee crises continue to demonstrate, these conditions are seldom met, and asylum remains indispensable both as an immediate response and as a solution.

36. More needs to be done to counter the threats to asylum. In securing protection for persons compelled to flee their homes and countries, a first step lies in distinguishing persons who require international protection from those who do not, and giving at least temporary protection in cases of mass influx. Without prompt, fair and efficient mechanisms for this - whether in mass influx or in individual cases - there will be risks to safety and security, as well as abuses. As a result, States may well have recourse to measures which effectively reduce available protection. In mass influx situations, military elements must be disarmed and separated from the outset. Camps or settlements should be situated at a proper distance from frontiers, and refugees' adherence to national law ensured. Where inadequate efforts are made in this regard, tensions between States are likely to be exacerbated, and infiltration of camps, as well as attacks against them, could occur. The international community must also strongly support proper access and monitoring, as critical aspects of securing protection and assistance for both refugees and returnees. For this to be effective, further legal measures to enhance the safety and security of aid workers are urgently required.

37. The international community has the necessary tools, whether legal, practical or political, to ensure that the grant of asylum remains a peaceful act, consistent with national security requirements and international law. In practice, refugee situations may overwhelm the capacity of host States in this regard, compelling increased support by other actors - States, the United Nations, other international organizations, and non-State actors - in maintaining the institution of asylum. International solidarity and burden-sharing are a real requirement in this connection, and demand significant levels of effort, resources, and commitment on the part of other States. UNHCR will continue to highlight the dilemmas confronting all parties, and the international protection framework itself. The refugee protection regime is, above all, designed to help resolve the problems of individuals whose rights and liberties are violated and threatened, and to support the rights of States to live in peace with one another. As a universal framework, however, it is only with the active participation and support of all Governments that this design can be effective, particularly in the new and more dangerous environment in which UNHCR is increasingly engaged.